BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of	)	
	)	CC Docket No. 01-337
Review of Regulatory Requirements for	)	
Incumbent LEC Broadband	)	
Telecommunications Services.	)	

COMMENTS OF THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI

The Public Service Commission of the State of Missouri ("MoPSC") offers the following comments in response to the Federal Communication Commission's ("Commission") January 15, 2002 Public Notice (Notice) issued in the above docketed case. On December 20, 2001, the Commission released a Notice of Proposed Rulemaking (NPRM) to consider whether incumbent local exchange carriers (ILECs) should be treated as non-dominant in the provision of broadband telecommunications services. The Notice seeks comments on what changes, if any, the Commission should make to its traditional regulatory requirements for ILECs' provision of broadband services.

In this proceeding, the Commission initiated an examination of regulation for the ILECs' provision of "domestic broadband telecommunications services" (NPRM par 1). For purposes of the proceeding, the Commission uses the term "broadband telecommunications service" or "broadband service" in a very general sense to "describe a broad array of high-speed telecommunications services" but "avoids addressing statutory-based definitional issues", which will be addressed in a future proceeding. (NPRM footnotes 1 and 37).

With pending legislative proposals and multiple rulemakings addressing various aspects of broadband, the division between the discussions becomes blurred. The MoPSC finds it difficult to fully address the questions as outlined in the present rulemaking without considering the impact of other legislative proposals and/or rulemakings as interrelated outcomes. Further, without first defining the full array of "broadband telecommunications services" or "broadband services" it becomes even more difficult to comprehend the full scope of this proceeding. Therefore, the MoPSC has approached these comments mainly from the aspect of wireline-provisioned services to aid the Commission in its review of regulatory requirements for ILEC broadband telecommunications services.

As noted in paragraph 5 of the NPRM, under existing domestic common carrier regulation, ILECs are treated as dominant carriers absent a finding to the contrary for a specific market. As such, ILECs are subject to tariff filing and pricing requirements. While the Commission has moved to reduce regulation of former monopoly carriers as competition erodes their market power, it recognized the need to prevent ILECs from creating monopoly power in one market by leveraging the market power in a related, competitive or potentially competitive market (NPRM, para. 8). Various competitive safeguards are in place to prevent such leverage.

In 47 CFR Section 61.3 (Definitions) the Commission distinguishes between two types of carriers – those with market power, or dominant carriers and those without market power, or non-dominant carriers. Those carriers classified as non-dominant are subject to reduced regulation because with limited market power, they do not present harm to existing carriers.

The NPRM specifically asks commenters to address the ILECs ability to exercise market power through two means: First, raising prices by restricting its own output; and second, raising prices by increasing its rivals' costs or by restricting its rivals' output through the carrier's control of an essential input, such as access to bottleneck facilities, that its rivals need to offer services. (NPRM, para. 28) The NPRM also addresses the ILEC's wholesale obligations under section 251 to make their facilities available as unbundled network elements (UNEs) to competitive carriers for the provision of broadband services. While the MoPSC does not regulate broadband services per se, it currently has pending before it several cases that indirectly address related issues. Therefore, the MoPSC declines to specifically address many of the specific questions outlined in the NPRM and offers these general observances for the Commission's consideration without taking a position as to their relevance to pending Missouri cases.

The NPRM asked many questions about the appropriate identity of the ILEC-provided broadband services market. Although the MoPSC has not undertaken any specific studies to properly address these questions, it offers the following statistics, which were entered as evidence in various cases before the MoPSC as being a representative snapshot of the wireline broadband landscape with emphasis on the DSL market.

Evidence in existing cases portrays that greater than 90 percent of all Missouri DSL is provided by Southwestern Bell Telephone Company's (SWBT) data affiliate. Further, according to an April 23, 2001, SBC Investor Briefing, SBC notes, "Going forward, SBC anticipates volatility in quarterly customer growth numbers as it completes the transition of its customer base to automated systems and as a limited number of ISP (Internet Service Provider) resellers and DSL providers work their way through widely reported financial difficulties. Because more than 80 percent of its DSL customer base obtains Internet access service directly from an SBC entity or affiliate, SBC has limited exposure to ISP financial failure. Nevertheless, a few ISPs' restructuring or closing operations in a quarter could significantly distort the quarter's growth statistics. Over time, SBC expects to continue to be the DSL provider for many of these ISPs' customers – including temporarily displaced customers – whether these ISPs successfully restructure, transition their customersto more stable ISPs or cease operations altogether." Finally, a February 1999 SWBT briefing package "Southwestern Bell ISP Partnership Program" provides the following information on an initiative to team SWBT DSL services with the ISP market: a) Builds partnerships with a key segment of the market that is a natural fit with SWBT's DSL transport service; b) Introduces DSL to the marketplace through ISPs that are strategically positioned with the customer base that is most likely to purchase the product; c) Offers commission incentives to ISPs using the SWBT brand; d) Available to ISPs at tariffed rates to be repackaged as part of a total Internet package sold to end users.

The National Regulatory Research Institute and BIGresearch (collectively NRRI), an online market research company, conducted a national survey of Internet users from October 25, 2001 to November 3, 2001. Missouri-specific results of the survey were recently provided to the MoPSC and portions thereof are offered in these comments. NRRI notes the survey meets tests of statistical validity for Missouri-specific data but acknowledges there may be some bias towards respondents with complaints about their Internet service. The survey shows that Missouri consumers receive Internet connectivity as follows: 68.5 percent via ordinary telephone lines; 8.3 percent via DSL or ADSL; 15.6 percent via cable modem; 3.5 percent via ISDN or ISDL; and, 1.4 percent via wireless or satellite. The national average is very similar to the Missouri makeup. Approximately 23 percent of those surveyed rate service as excellent, 33 percent rate service as very good and 30 percent rate service as good. However, almost 60 percent of those surveyed would consider switching to a different Internet service if it was available at their home today. Of that 60 percent, 28.5 percent would prefer cable modem service and 23.4 percent would prefer DSL/ADSL service. Nationally, the choices for change are almost evenly split between cable modem and DSL/ADSL services at 27.7 percent and 27.4 percent respectively. Approximately 35 to 40 percent of the surveyed population is uncertain as to a preference for service.

TeleChoice, Inc., a consultant for the telecommunications business industry, recently released an article noting ILECs in the United States have more than 88 percent of the country's total DSL market, compared to CLECs with 11 percent and interexchange carriers (IXCs) with 1 percent (TeleChoice, Inc. at http://www.telechoice.com/newsdetail.asp?news_id=313).

As further background information, but again without asserting a position as to the relevancy to the pending Missouri cases, the MoPSC would like to point out to the Commission that SBC asserts it has a "voluntary" Broadband Service offering that it makes available to CLECs for use of its Project Pronto architecture. The central-office based ADSL can be provided to end user locations within 18Kft. of a wire center or typically around three (3) miles. Under this constraint, SBC can offer ADSL to approximately 40percent of its end user locations. The Project Pronto architecture will increase ADSL capability from the existing 40 percent to approximately 80 percent of all SBC end user locations. According to Southwestern Bell Telephone Company (SWBT), the voluntary Broadband Service offering enables CLECs, via collocation of Digital Subscriber Line Access Multiplexers (DSLAMs) at the remote terminals, to establish an end-to-end ADSL service over Pronto in three different manners: as an end-to-end service through a line sharing arrangement; as a data only arrangement; and, as a combined voice and data arrangement. According to representations made to the MoPSC, as of June 2001, only three CLECs had opted in to the Broadband Service Offering because of concerns such as the term length of the voluntary agreement, pricing of the voluntary Broadband Service offering and potential withdrawal of the Broadband Service offering at SWBT's discretion.

In general, the MoPSC encourages the Commission to consider a policy that promotes investment and broadband deployment. Thus far, the Commission has chosen a path of reduced regulation to foster competition among broadband service providers. The MoPSC promotes such reduced regulation to the greatest extent possible and encourages the Commission to adopt policies that remain technologically neutral so as to not promote one form of broadband service over another.

However, as indicated by the above representations, market power for ILECs in relationship to the provisioning of broadband telecommunications services is strong and is likely to remain strong until consumers successfully switch to services provided via some alternative method. Therefore, the MoPSC recommends ILEC broadband telecommunications services remain classified as dominant. The MoPSC suggests that it would be appropriate to streamline the traditional dominant carrier regulation. In an effort to remain as technologically neutral as possible, the MoPSC recommends ILEC broadband telecommunications services be subject to an informational-only seven or fifteen-day tariff filing as provided in section 204(a)(3) of the Act. By exercising authority under Section 203(b) of the Act (NPRM, footnote 77), the Commission should waive the requirement to provide supporting information, including detailed cost studies, for ILEC broadband telecommunications services. Further, with the accounting safeguards in place to protect against collusion among affiliates, the MoPSC suggests accounting regulations could be reduced for the provisioning of DSL service. By retaining dominant status, the ILEC providing DSL would remain subject to section 214 obligations and would be required to file informational tariffs but would not be subject to the same reporting requirements as under traditional dominant carrier status.

As one final point, although the Commission has declined to address bundling of broadband services offered by wireline telecommunications providers at this time, the MoPSC encourages the Commission to consider the impact of providing non-dominant status to the broadband affiliate of a dominant ILEC. As evidenced by the statistics presented in these comments, broadband services, at least in Missouri, remains largely intramodal. As long as competitors continue to rely heavily on ILEC facilities, and the ILEC remains the dominant market power, opportunity exists for the broadband affiliate and basic local affiliate to bundle services, effectively precluding competition in the broadband market from flourishing.

In summary, while the MoPSC supports a reduced regulatory regime for ILEC broadband telecommunications services, statistics suggest that ILECs should not be granted non-dominant status at this time. In order to promote investment and broadband deployment, the MoPSC suggests ILEC broadband service providers, while operating under dominant status, be subject to reduced regulation, as outlined in these comments.

Respectfully submitted,

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